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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HARBINDER SINGH,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74477

Agency No. A79-400-138

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 20, 2008^{**}

Before: PREGERSON, TASHIMA and GOULD, Circuit Judges.

Harbinder Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") decision denying his applications for withholding of removal and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand for further proceedings consistent with this disposition.

The IJ explicitly declined to make an adverse credibility determination, stating that he denied withholding of removal and CAT "on the merits," but proceeded to deny Singh withholding of removal and CAT protection after identifying perceived inconsistencies between Singh's testimony, airport and credible fear interviews, and his asylum application. Thus, it is unclear from the record whether the IJ's denial was based on a finding against Singh's credibility or on a determination that Singh failed to establish eligibility for these forms of relief. The BIA then compounded the error when it adopted and affirmed the ambiguous IJ decision, citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). *See Huang v. Mukasey*, 520 F.3d 1006, 1008 (9th Cir. 2008).

In these circumstances, we must remand for the agency to determine its basis for denying Singh's claims. *See id.*; *INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.